IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17215 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SALIMKHAN SHARIFKHAN PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 19/09/2005

ORAL JUDGMENT

1.The order of detention dated 26.07.2005 passed

by the Police Commissioner, Ahmedabad City, respondent No.2 herein in exercise of power under Sub-Section(2) of Section 3 of Prevention of Anti- Social Activities Act, 1985 (for short PASA) detaining the detenue U/s. 2(b) of the “Act” as a bootlegger on the ground that the order of detention is illegal and unconstitutional and violative of Articles 14, 19, 21 and 22 of the Constitution of India and being illegal and unconstitutional requires to be quashed and set aside.

2.The order of detention dated 26.07.2005 alongwith grounds contained therein reflects registration of C.R. No. 1224 of 2005 dated 23.07.2005 at Prohibition Station (West) for the offences punishable under Sections 66, 1B, 65AE, 116(B) and 81 of the Bombay Prohibition Act, 1949 are not sufficient and, therefore, to contain the activities of the detenue and to prevent him from indulging into some criminal

and antisocial activities in future, the power is exercised under the said Act.

3. The above mentioned facts are the basis for arriving at subjective satisfaction that the activities carried out by the detenue are prejudicial and resulting into disturbance of public order and/or general health of the public and, therefore, invoking of powers under Sub-Section (2) of Section 3 by the Detaining Authority is justified.

4. Learned counsel for the petitioner has challenged the order of detention dated 26.07.2005, mainly on the ground that the solitary offence of Registration of crime under the provisions of Bombay Police Act, 1951, can not by itself led but disturbance of public order or the general health of public and therefore, the Detaining Authority has illegally invoking the power branding the

detenue as a bootlegger as defined under Section 2B of the Act. In support of his argument, the learned advocate has placed reliance on the decisions reported in AIR 1989 SC 497 and the decision of Letters Patent Appeal No. 223 of 2000 of the Division Bench of this Court. Therefore, according to learned advocate for the petitioner, since there is no nexus of the activities carried out by the detenue as stated in the grounds or in the order of detention and the only material did not exist against the detenue, as stated by the Detaining Authority, by itself do not form relevant material for arriving at subjective satisfaction for passing the impugned order of detention that the activities are disturbing the public order and even in future.

5.Learned A.G.P. Ms. H.B. Punani has tried to justify the order of detention on the ground that the registration of crime against the

detenue is relevant material and in given case, even registration of solitary offence may led to disturbance of public order and therefore, she has submitted that this is not a case where the power under Article 226 of the Constitution of India requires to be exercised.

6.The decision reported in L.P.A. 223 OF 2000 in Special Civil Application No.554 of 2000 wherein in Para- 5 of the said judgment law laid down by the Apex Court in case of **K.S.Zala Vs State of Gujarat** is discussed is as under:-

> "5:- If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is , of course, true that after narrating the authority has mentioned that the

activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft the context. The judgment is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order, material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or

infringement of the petitioner's right against such statements. In this view of the matter unregistered cases and with regard to the three incidents the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were on obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach

of public health and public order."

7.In view of the above position of law, in the facts of the present case also registration of a solitary crime by itself can not be said to have disturbed the even tempo of public life and in the facts of the present case, the gravity and the magnitude of the offence is not disturbing, which may result into disturbance of normal activities of the people at large at public place. In the circumstances, the law laid down by the Division Bench of this Court applies in the present case also the order of detention dated 26.07.2005 is ordered to be quashed and set aside.

8.In view of the above, the petition is allowed. The order of detention dated 26.07.2005 is quashed and set aside. The detenue Salimkhan Sharifkhan Pathan is ordered to be set at liberty forthwith if he is not required in

connection with any other case by any other authority.

9.Rule is made absolute accordingly. Direct service is permitted.

(A.S.DAVE,J.)

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